

### **REMARKS**

Claims 1-15 are pending in the application and stand rejected. Claim 10 has been amended to correct an obvious typographical error. Applicants respectfully request reconsideration in view of the amendments and remarks herein.

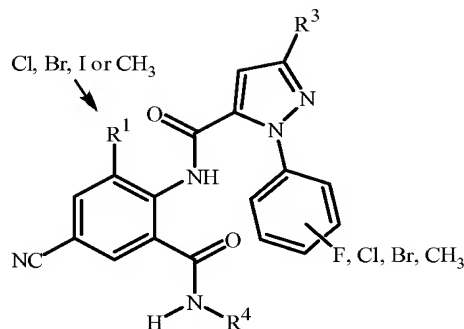
Applicants point out that the claims in the publication for the present application, i.e. US2007/0184018A1, do not seem to reflect the amendments made during the PCT international phase. However the Examiner does appear to have the correct set of claims. In any event, Applicants have presented amended claims herein based upon those as amended during the international phase.

### **Double Patenting**

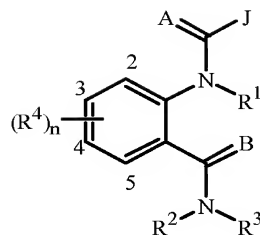
**Claims 1, 3 and 7 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 3, 12, 13 and 22 of U.S. Patent No. 6,747,047 B2. Applicants respectfully traverse this rejection.**

Applicants maintain that present Claims 1, 3 and 7 are patentably distinct from Claims 1, 3, 12, 13 and 22 of US Patent 6,747,047. Lahm et al. claims a method for controlling particular insect pests involving contact with a compound of a generic formula that embraces present Claims 1, 3 and 7. Nevertheless, the broad disclosure and claims of Lahm et al. do not teach or lead one skilled in the art to the present invention.

For example, R<sup>7</sup> of Lahm et al. Formula I can be, *inter alia*, alkyl, alkenyl, alkynyl or cycloalkyl, or optionally substituted phenyl, benzyl, 5- or 6-membered heteroaromatic ring, a naphthyl ring system or an aromatic 8-, 9- or 10-membered fused heterobicyclic ring system; whereas compared to this broad description, the compounds of the present method comprise a phenyl ring with two precisely positioned substituents. Furthermore the phenyl ring of Lahm et al. can be either unsubstituted, or poly-substituted with a wide range of substituents; whereas the phenyl ring in the compounds of the present method is only mono-, di- or tri-substituted with halogen or methyl.



Formula 1 compounds  
of present invention



Formula I of Lahm et al.

Only Claim 16 of Lahm et al. narrows J to (*inter alia*) pyrazole and the selection of R<sup>7</sup> to optionally substituted phenyl or 2-pyridinyl. However, this claim also specifies substituent R<sup>4</sup> to be attached at the 2-position (as limited from Claim 14) and be selected from H, CH<sub>3</sub>, CF<sub>3</sub>, OCF<sub>3</sub>, OCHF<sub>2</sub>, S(O)<sub>p</sub>CF<sub>3</sub>, S(O)<sub>p</sub>CHF<sub>2</sub>, CN or halogen. Therefore Claim 16 of Lahm et al. teaches towards placing the -CN substituent at the 2-position instead of the instant 4-position. Accordingly Lahm et al. teaches away from the present invention.

It is well known in the art that the invertebrate pest control activity of organic compounds are a function of numerous factors relating to physical properties (such as size, shape, solubility, lipophilicity, etc.) and biochemical properties (such as transport, binding, metabolism, etc.). Given this complexity, it is not always possible for the skilled artisan to predict the activity and hence the particular utility of even seemingly closely related compounds. Even moving a substituent a single carbon position can have a substantial effect on the stereoelectronic profile of a molecule and its biological utility. The difference between the 2-position of Lahm et al. in Claim 3 and the present 4-position involves a shift of multiple positions.

Furthermore, Lahm et al. does not specifically disclose test results or any other evidence of invertebrate pest control utility for compounds having -CN at the 2-position and indeed does not name any such compound. Applicants respectfully submit that Claims 1, 3 and 7 are nonobvious and patentably distinct over Lahm et al. and request removal of this rejection.

**Claims 1, 3 and 7 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1, 17 and 19 of copending Application No. 11/700,584. Applicants respectfully traverse this rejection.**

Applicants point out that subsequent to the mailing of the present office action copending Application No. 11/700,584 granted as U.S. Patent No. 7,541,377 on June 2, 2009. Claims 1, 17 and 19 referred to by the Examiner in Application No. 11/700,584 appear to now correspond to Claims 1, 15 and 16 in the patent as granted.

Applicants respectfully point out that contrary to the Examiner's allegation that instant Claims 1, 3 and 7 and copending Claims 1, 17 and 19 are both directed to compounds of instant Formula 1 and that from this extensive overlap of subject matter, one of ordinary skill in the art would recognize that the same product is produced in copending application 11/700,584, there is no overlap between instant Claims 1, 3 and 7 and copending application Claims 1, 17 and 19 (or copending patent Claims 1, 15 and 16). The Examiner's attention is directed to instant substituent R<sup>2</sup> which is limited to -CN. Instant substituent R<sup>2</sup> corresponds to copending substituent R<sup>5</sup> which cannot be -CN.

Accordingly, Applicants respectfully request that this rejection be withdrawn.

**Claims 1, 3 and 8 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 2 of copending Application No. 12/141170. Applicants respectfully traverse this rejection.**

In the interest of expediting prosecution, a Terminal Disclaimer to Obviate a Provisional Double Patenting Rejection over a Pending "Reference" Application is being filed with this AMENDMENT AND RESPONSE. Applicants confirm that the present application and Application No. 12/141170 are commonly owned.

Claims Rejections – 35 U.S.C. §103

**Claims 1-15 were rejected under 35 U.S.C. 103(a) as being unpatentable over Lahm et al. (WO01/70671 A2) in view of Lahm et al. (US Patent Application 2004/0063738A1). Applicants respectfully traverse this rejection.**

Applicants point out that Lahm et al. (WO 01/070671 A2) and Lahm et al. (U.S. Patent Application 2004/0063738) and the present invention were owned by the same entity at the time the present invention was made; all were assigned or subject to an obligation of assignment to E. I. du Pont de Nemours and Company.

As discussed above, Applicants strongly maintain that compound Claims 1, 3 and method Claim 7 rise to the level of patentability by satisfying the requirements of being novel

and non-obvious over WO 01/070671. Any composition claims using an ingredient comprising a compound of Claim 1 should therefore also be found novel and unobvious over the same reference.

In addition to the discussion above with respect to US 6,747,071 (which is a US national phase entry from the PCT application which published as WO01/70671) which discussion is applicable with respect to this rejection, in Tables 1-17 of Lahm et al. there is not one compound with a substituent at the 4-position on the phenyl ring. Index Table D of Lahm et al. lists 241 compounds wherein R<sup>7(b)</sup> is substituted phenyl; however only 8 of those compounds have a substituent at the 4-position on the phenyl ring and none are -CN.

The Examiner has alleged that a soil drench of a liquid formulation is obvious further in view of U.S. 2004/0063738.

Applicants respectfully point out that the compounds of US 2004/0063738 are completely different from those of WO 01/070671. The compounds of US 2004/0063738 are phthalic acid diamides whereas the compounds of the present application are anthranilamides. Applicants fail to see the motivation for combining these references and how their combination leads to Applicants' invention or cures the deficiencies pointed to above with respect to WO01/ 070671.

Accordingly, Applicants respectfully maintain that Claims 1-15 are not suggested by WO 01/070671 A2 and US 2004/0063738 and request that this rejection be withdrawn.

In view of the foregoing, allowance of the above-referenced application is respectfully requested.

Respectfully submitted,

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